**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH, NAGPUR**

**Second Appeal No.387/05**

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| **Notes, Office Memoranda of** Coram, appearances, Court's orders or directions and Registrar's orders. | **Court's or Judge's Orders.** |
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**CORAM** : **A.P. Lavande,J**
**DATE : 16th August, 2006**

Heard Mr. V. M. Deshpande, learned counsel for the appellant.

2. This appeal is directed against the Judgment and decree dated 27th January, 2005 passed by the learned Additional District Judge, Amravati in Regular Civil Appeal No. 178/99 dismissing the appeal filed by the appellants against the Judgment and decree passed by the Third Joint Civil Judge, Sr. Dn., Amravati dated 15.10.1997 in Special Civil Suit No. 120/91. The respondents 1 and 2 filed the above suit seeking reliefs of partition and possession in respect of the suit property as well as for declaration that the will dated 20.9.1990 alleged to have been executed in favour of the defendant no.1 be declared as null and void. The trial Court held that the will dated 20.9.1990 which was alleged to have been executed by Nathuji in favour of the defendant no.1 was null and void and consequently decreed the suit for declaration, partition and separate possession. The

learned trial Court further held that the plaintiffs were entitled to 1/3rd share each in the suit property and the defendant no.1 was entitled to 1/3rd share in the suit property. The findings given by the learned trial Court have been confirmed by the appellate Court in the appeal preferred by the present appellants. Mr. Deshpande, learned counsel appearing for the appellants submits that both the courts below have erred in law in not relying upon the will dated 20.9.1990 which was duly proved by examining the subscriber of the will. He further submitted that the plaintiffs had absolutely no right, title or interest in respect of the suit property in view of the said will.

3. Having considered the submissions made by the learned counsel for the appellants and having perused the impugned Judgment, I am unable to accept the submissions made by Mr. V. M. Deshpande. In my opinion, the trial Court, upon correct appreciation of the evidence led by the parties held that the defendant no.1 has not proved the will as required under the law and consequently held that the plaintiffs and the defendant no.1 were entitled to 1/3rd share each in the suit property. In my opinion, this finding of the trial court which has been confirmed by the appellate Court is based upon the correct appreciation of the evidence led by the parties. I do not find any perversity in the findings given by the trial Court which have been confirmed by the appellate Court.

In any event, I do not find that no substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

**Judge**

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